



## **BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION**

### **Waiver No. 08-11-015 W**

For one year after leaving County employment, a former employee must not enter into any employment agreement with any person or business if, during the prior three years, the employee significantly participated in any procurement or other contractual activity concerning a contract with that person or business. § 19A-13(b). Gordon Aoyagi, former director of the Department of Homeland Security, seeks a waiver of this prohibition in order to pursue post-County employment with a consulting firm that has contracted with his former department. The Commission will waive the prohibition of § 19A-13(b) because the proposed employment is not likely to create an actual conflict of business so long as Mr. Aoyagi does not work on any County-related business during the remaining term of the one-year post-County employment prohibition in § 19A-13(b).

Mr. Aoyagi retired as department director on June 30, 2008. In late March 2008 he authorized a direct purchase order of less than \$5,000 to obtain contract services from a consulting firm to develop and format GIS files (geographical information systems). The consulting firm completed this direct purchase order work in April 2008. The consulting firm has no on-going contractual relationship with the County.

Mr. Aoyagi would like to accept an employment offer from the consulting firm that contracted with his department. He states that there were no discussions or inferences of any kind of potential employment opportunities during the time the County engaged the consulting firm. Mr. Aoyagi reports that he did not begin to pursue and respond to employment opportunities until a few months after retiring from the County. He states that he will not seek to obtain or perform services on behalf of the consulting firm on any County contracts during the remaining term of the one-year post-County employment prohibition in § 19A-13(b).

The waiver standard for the post-County employment prohibitions of § 19A-13(b) is set forth in § 19A-8(c). Under that standard, the Commission can waive the post-County prohibitions of § 19A-13(b) if it finds that the proposed employment is not likely to create an actual conflict of interest. § 19A-8(c)(2). Examples of actual conflicts of interest that would preclude waiver include the following: (1) accepting a position where the new employer would have reason to require the former County employee to reveal confidential information learned as a County employee in violation of § 19A-15(a) or (2) accepting a position where the new employer would require the former County employee to work on the same case, contract or other specific matter he worked on as a County employee if the post-County employer's position is adverse to the County's position.

Thus, the Commission has waived the 10-year prohibition contained in § 19A-13(a) where the former County employee proposed to work for a County subcontractor on the same specific matter he worked on for the County because the employee would essentially be doing the same work for the County's benefit, albeit through a subcontractor. *Waiver No. 03-017* (May 15, 2003).

The Commission will grant the requested waiver as it can find no actual conflict of interest in the requested post-County employment. The County's contract with the consulting firm was only \$5,000 and the work was completed in about one month's time. Mr. Aoyagi states that he will not seek to obtain or perform services on behalf of the consulting firm on any County contracts during the remaining term of the one-year post-County employment prohibition in § 19A-13(b) (June 30, 2009). With this understanding, the Commission grants the requested waiver.

In reaching this decision the Commission has relied upon the facts as presented by the requestor.

FOR THE COMMISSION:

A handwritten signature in black ink, appearing to read "Antar C. Johnson", written over a horizontal line.

November 18, 2008

---

Date

---

Antar Johnson, Chair